IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4157 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

AK PATEL

Versus

COMMISSIONER OF SALES TAX

Appearance:

MR PB MAJMUDAR for Petitioner

MR DA BAMBHANIA for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/04/97

ORAL JUDGEMENT

The petitioner who has been serving as a Sales Tax Officer, Class-II under the respondent has preferred this petition against institution of disciplinary proceeding pursuant to the memorandum of charge issued on 10th May, 1996. Facts leading to the petition are as under :

The petitioner seems to have acquired certain

immoveable property worth Rs. 85,000/- in the year 1985. The petitioner did not inform the Government about the property acquired by him. Thus, the petitioner appears to have acted in contravention of Rule 16 of the Gujarat Civil Services (Conduct) Rules, 1971. A disciplinary proceeding was initiated against the petitioner by issuing a chargesheet on 20th April, 1991. The petitioner replied to the said chargesheet. The petitioner explained that the said property was acquired by him by borrowing certain amounts from his brother and the brother in law and that he was not required to repay the said loan amount. The petitioner's explanation was found to be evasive and unsatisfactory. The Disciplinary Authority found that the petitioner's acquisition of the property was tainted and that he had acted in contravention of the provisions contained in Rule 16(5) of the Gujarat Civil Services (Conduct) Rules, 1971. A finding of guilt was recorded against the petitioner and under order dated 21st May, 1994 a "CHETAVANI" was issued to him. According to Modern Gujarati - English Disctionary by Bhanusukhram Mehta and Bharatram Mehta the word CHETAVANI means

"A warning, A caution."

It appears that the order made by respondent on 21st May, 1994 was found to be erroneous. Rule 6 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 (hereinafter referred to as "the Rules") empowers the Disciplinary Authority to impose penalties enumerated thereunder upon any member of the State subordinate or inferior service. The lightest penalty enumerated therein is that of "Censure". Thus warning issued to the petitioner is not a punishment which could have been validly imposed upon the petitioner by respondent after recording a finding of guilt against him. Realising the mistake committed by the respondent, the successor in office cancelled the "Warning" issued to the petitioner and under the impugned memorandum of charge dated 10th May, 1996 initiated the inquiry afresh in the same subject matter. Feeling aggrieved, the petitioner has preferred this petition.

Learned advocate Mr Majmudar has appeared for the petitioner and has contended that the disciplinary proceedings initiated against the petitioner were concluded by issuing "Warning" to him under order dated 21st May, 1994. The respondent, therefore, had no power to reopen the matter and initiate a disciplinary proceeding in the subject matter afresh. He has further submitted that "Warning" also is one kind of "Censure"

and it is not correct to say that the respondent had no authority to impose such a penalty. The impugned action, therefore, amounts to reopening of the disciplinary proceeding for which the respondent has no power. He has, therefore, submitted that the impugned memorandum of charge has been issued without authority of law and requires to be quashed and set aside.

Learned AGP Mr Bambhania has appeared for the respondent and has contested the petition. He has submitted that the predecessor in office of the respondent had after recording a finding of guilt against the petitioner had allowed him to go scot-free since issuance of "Warning" cannot be said to be a penalty at all. He has submitted that under rules 22 and 24 of the Rules, the Government has power to review its own order or an order made by a subordinate officer against which an appeal lies to the Government. He has, therefore, submitted that the action of the respondent in issuing the impugned memorandum of charge is in consonance with the above referred rules 22 and 24 does not call for any interference.

Learned advocate Mr Majmudar has relied upon the judgment of the Calcutta High Court in the matter of Nirmal Kumar Vs. Union of Indian and others (1975 (2) SLR 103) in support of his contention that "Warning" is a kind of "Censure". In paragraph 14 of the judgment, the Court has held that, "The warning implied within it a blame for the appellant for the failure of the engine. In our view, this is nothing but "Censure" and is, therefore, a penalty". Mr Majmudar has next relied upon the judgement of the Kerala High Court in the matter of Madhavan vs. Commissioner of Income Tax, 1983 (2) SLR 607. In that case, the Government prevented an employee's promotion. The Court held that, "it is difficult to see how a warning, which is not even a punishment, and which is not given in accordance with the principles of natural justice, can stand on a better or stronger footing in the matter of preventing an employee's promotion". Thus, in the above referred matter of Madhavan Vs. Commissioner of Income Tax, the Kerala High Court has held that if an employee is found guilty and if he deserves leniency, the minimum that should be done is to impose the penalty of censure. it is further held that warning is not even a punishment. With respect, I do not agree with the decision of the Calcutta High Court. In The Little Oxford Dictionary, the word "Warning" has been defined as

Warning : what is said or done or occurs to warn person".

The word "Warn" has been defined as

Warn : inform of impending danger or misfortune; to take certain action; inform about specific danger.

New Webster's Dictionary and Thesaurus defined the word "Warn" as

Warn : to notify by authority; to admonish; to put on guard; advance notice of anything; admonition; caution etc.

In The Little Oxford Dictionary, the word "Censure" has been defined as

Censure : criticize harshly; reprove; hostile criticism; disapproval.

The Webster's New 20th Century Dictionary, Second Edition defines the word "Censure" as

Cesnure : The act of blaming or finding fault and condemning as wrong; blame; reproof; reprehension; reprimand; adverse criticism.

A judgment or resolution condemning a person for misconduct; specifically an official expression of disapproval passed by a Legislature.

Considering the above definition of the words "Warning" and "Censure" found in the dictionaries, it is apparent that the meaning conveyed by both the words are quite different. "Censure" carries with it a hostile criticism and disapproval which is not found in the word

"Warn". In my view, therefore, a warning cannot be said to be a type of "Censure" or a penalty at all. In the present case, therefore, it cannot be held that after recording finding of guilt against the petitioner, the respondent imposed a punishment of "Warning".

However, the question that arises for the Court's consideration is whether in the circumstances stated hereinabove, the respondent could have cancelled the order issuing warning to the petitioner and initiated disciplinary proceeding afresh by issuing the impugned memorandum of charge. In my view, such an action is not permissible. It must be observed that rightly or wrongly some order was made against the petitioner pursuant to the disciplinary proceedings held against him. It is true that under the said order the petitioner cannot be said to have been exonerated of the charge levelled against him. Nor it can be said that the punishment has been imposed upon the petitioner. However, if the action taken by the Disciplinary Authority were found to be erroneous in any manner such an order could have been taken in review under rules 22 and 23 of the Rules. Rule 22 empowers the Government, on its own motion or otherwise, to review any order passed by any authority which is appealable under the Rules. Rule 23 of the Rules empowers the appellate authority, inter alia, to review the order against which an appeal lies to such authority and to pass such order as it deems fit as if the Government servant had preferred an appeal against such order. Thus, if an order issuing "Warning" to the petitioner were found to be erroneous, the same could have been taken in review by the Government or the appellate authority, as the case may be, under rules 22 and 23 of the Rules respectively. In the present case, Mr Bambhania has argued that precisely it is this power to review which has been invoked by the authority for which it is competent to do. In the alternative, he has contended that under rule 24, the Government has power to review its own order. Similarly, the respondent could have reviewed its own order. I am afraid, I cannot agree with the submission made by Mr Bambhania. Power of review cannot be exercised unless there is an express provision conferring such power. The power referred to in rules 22 and 24 of the Rules is conferred upon the Government alone and not upon any subordinate officer. The respondent could not have invoked power of review under either of the rules 22, 23 or 24 of the Rules. The impugned memorandum of charge is, therefore, held to have been issued without the authority of law. The same having been issued without jurisdiction is required to be quashed and set aside.

As a result, petition is allowed. Impugned memorandum of charge issued on 10th May, 1996 is hereby quashed and set aside. Rule is made absolute. There shall be no order as to costs.

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